

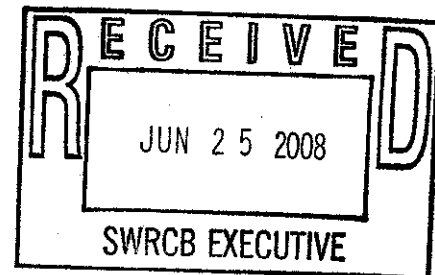
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**ELECTRONIC MAIL (commentletters@waterboards.ca.gov)
AND FIRST CLASS MAIL**

Members of the State Water Resources Control Board
c/o Ms. Jeanine Townsend
Clerk to the Board State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comment Letter-Landscape Irrigation General Permit
City of Oxnard



Dear Ladies and Gentleman:

The City of Oxnard ("City") thanks the State Water Resources Control Board ("State Board") for the opportunity to comment on the scope and content of the General Permit for Landscape Irrigation ("General Permit") as required by the passage of AB 1481 (California Water Code §13552.5).

The City views recycled water as a resource and depends on its use in its water supply plan. It believes that the State of California's current and future water supply concerns mandate clarity and uniformity amongst the various Regional Water Quality Control Boards (Regional Boards) to support the increased use of recycled water. Regulations and policies that impede this goal should be changed. As such, the City welcomes AB 1481 as a step forward.

1. City of Oxnard

The City is home to over 190,000 people. To serve this growing population, the City's Water Division relies on imported surface water, groundwater from water wholesalers, and groundwater from the City's own wells. Local groundwater comprises the greatest portion of the City's water supply. The City blends water from these three sources to achieve an appropriate balance between water quality, quantity, and cost.

As described in more detail below, to meet its water supply needs through the year 2020, the City's Groundwater Recovery Enhancement and Treatment (GREAT) Program includes wastewater recycling, groundwater injection, storage and recovery, and groundwater desalination. Starting with treated wastewater that would otherwise be discharged to the Pacific Ocean, the GREAT Program will produce a high-quality purified recycled water product. The City strongly believes that this purified recycled water can be used safely for agricultural irrigation, industrial processes, landscape irrigation, groundwater injection for aquifer recharge, and as a seawater intrusion barrier.

At the present time, the City estimates it is using approximately 15,000,000 gpd of recycled water for landscape irrigation and believes that if AB 1481 leads to a General Permit that encourages, simplifies, and emphasizes the use of recycled water and eliminates many of the current barriers to its usage, the

City could easily double the usage. Presently, the time, expense, and uncertainty in planning for additional uses is a major impediment for the City.

(a) The City's Planned Use of Recycled Water is a Cornerstone of its Water Planning

Like many California municipalities, the City faces a number of challenges related to water resources. These include a growing population, greater demand on water supplies, competition over local groundwater resources, more costly and potentially less reliable imported state water, and the need to restore local wetlands.

As a result, Oxnard developed the GREAT Program. An innovative project with significant regional benefits, the GREAT Program combines wastewater recycling and reuse, groundwater injection, storage, and recovery, and groundwater desalination to provide regional water supply solutions. Designed to meet the City's current and future water supply needs, the Program also initiates the delivery of over 20,000 acre feet of recycled water for agricultural irrigation and groundwater recharge, and provides a brackish water byproduct that can be used to help restore vital local coastal wetlands. The GREAT Program began at the Oxnard Wastewater Treatment Plant with the construction of the Advanced Water Purification Facility (AWPF). This portion of the Project includes tertiary treatment facilities to meet the State Department of Public Health (DPH) criteria for unrestricted reuse and advanced treatment to achieve the highest recycled water quality.

The advanced treated, recycled water from the AWPF will be made available to agricultural users in the Oxnard Plain that are currently using local groundwater and surface water supplies. This recycled water will be of higher quality than the existing supplies and will help relieve over-drafting of the local groundwater basin, which has led to seawater intrusion. In the winter, when irrigation demands drop off, the recycled water will be injected into the groundwater basin to reduce the potential for seawater intrusion into nearby agricultural areas. By using recycled water in lieu of groundwater, the unused groundwater allocation will be transferred from agricultural users to the City. The City can then extract the groundwater in the optimal locations.

(b) The GREAT Program Benefits

Oxnard's GREAT Program provides significant regional benefits. The Program is an excellent example of how challenges can be transformed into opportunities to better serve residents, seek innovative technological means to generate solutions, facilitate partnerships, build public awareness, enhance public confidence, and advocate for legislative support.

The development of the GREAT Program was made possible through a cooperative effort with partner agencies throughout the region. Years before the program was publicly unveiled, representatives from the City, Port Huéneme Water Agency, United Water Conservation District, Calleguas Municipal Water Agency and Fox Canyon Groundwater Management Agency met regularly to discuss regional water supply issues. This ongoing communication has been vital to the Program's overall success.

Congresswoman Lois Capps of California's 23rd District introduced legislation to authorize a federal partnership for the GREAT Program. The City of Oxnard Water Recycling and Desalination Act of 2004 authorized the Secretary of the Interior to participate in the design, planning, and construction of the GREAT Program.

In late 2004, the City Council certified the environmental impact report for the GREAT Program, and the Water Resources Division subsequently initiated design and construction of a wide variety of projects. These include the AWPf, the recycled water distribution system, recycled water Aquifer Storage & Recovery Pilot Wells, Blending Station No. 1 Desalter, and the Blending Station No. 5.

The City has completed construction of Blending Station No. 5, which improves fire flows to South Oxnard. It expects that by this summer, Blending Station No. 1 Desalter, Wellfield No. 2, and Power Building No. 2 Projects, will be completed. These facilities will improve production capacity by over 9,000 gallons per minute and will remove minerals from locally-produced groundwater. Further, the City's design team has completed 60% of the design to the AWPf, which will utilize microfiltration/ultrafiltration, reverse osmosis, and advanced oxidation processes to treat secondary-treated effluent from the Wastewater Treatment Plant, producing a purified recycled water product. The City expects the AWPf to be operational in late 2010.

2. AB 1481 Requires a New Look at Recycled Water Usage

(a) AB 1481 – History/Purpose

On October 15, 2007, AB 1481 was enrolled and added as Section 13552.5 to the Water Code. This bill requires the State Board, on or before July 31, 2009, to adopt a General Permit for landscape irrigation uses of recycled water for which the DPH has established uniform statewide recycling criteria.

AB 1481 is an alternative to the current process of Regional Board whereby the Regional Boards are required to approve, disapprove or create conditions for approval of an individual recycled water use. During discussion of the bill, it was recognized that the State Board is developing a statewide policy on recycled water, but this bill takes the further step of providing authority to the State Board to administer its own permit system outside of the Regional Board structure. It does not preclude "Regional regulation" but provides for an alternative to those seeking to maximize the use of recycled water in regions with boards that do not foster the usage. It also allows those in regions with boards that support recycled water projects to continue obtaining permits from their Regional Board should they wish to proceed through that process or to maintain a permit they already have.

The comments of the bills author, Assemblyman De La Torre at the June 18, 2008 State Board Workshop (Workshop) are pertinent. He stated that the intent of the legislation was to:

- Simplify and expedite the process of obtaining permits to use recycled water.
- Increase the use of recycled water.
- Deter the "patch work" process that is presently going on through the various Regional Boards.

The City agrees with Assemblyman De La Torre.

(b) AB 1481 – Important Features and General Comments

(i) Expression of Intent

The legislative expression of intent in the statute states that there is to be created a uniform interpretation of state standards to ensure the "safe, reliable" use of recycled water for landscape irrigation that is consistent with state and federal law. The preamble notes that there is inconsistent regulation which has

"led to the imposition of overly restrictive water recycling requirements and added costs, thereby creating an obstacle to achieving the full potential for water reuse."

City Comment:

The expression of the legislature's intent could not be clearer. Anything that imposes undue restrictions, delays, or costs on the use of recycled water for landscape irrigation is not to be tolerated. The legislature certainly understands that the current system is not working to the benefit of the people of this state. In viewing how the State Board should proceed, this basic goal must be kept in mind as this process unfolds to fulfill the legislature's mandate. In doing so, it must be noted that the legislature has given the State Board authority to act on its own, and it need not seek permission from any other agency of this state in establishing the perimeters of the General Permit.

(ii) **Sole Responsibility to Set Eligibility**

It is only the State Board who has the responsibility and authority to "establish criteria to determine eligibility for coverage under the General Permit." That is, only the State Board can decide who is in and who is not, what activity is covered and what is not.

City Comment:

What AB 1481 does is provide the State Board with the sole responsibility to create the eligibility requirements. On any specific issue of eligibility the State Board need only "consult" with the Regional Board. (This is discussed further below.)

(iii) **Sole Responsibility for Recycled Water Quality**

AB 1481 places the sole responsibility in assessing the quality of the recycled water, not in the State Board, but in DPH. AB 1481 states:

"...the state board shall adopt a General Permit for landscape irrigation uses of recycled water for which the State Department of Public Health has established uniform state wide recycling criteria pursuant to Section 13521."

City Comment:

It is clear from a reading of AB 1481 that it requires the State Board not take any role in determining whether or not the recycled water in question is fit for use. The City asserts that as long as the recycled water is within the limits established by the DPH, then the water is acceptable. There is no need for any further evaluation as to quality of the water by the State Board, and no need for the State Board to be involved with the issue of emerging contaminants, an issue best left to the DPH. There is no need for the State Board to determine what it has discussed in its Recycled Water Policy (Draft) as "MCL equivalents." Indeed, the City believes that any such action would be clearly in violation of AB 1481.

At the Workshop, Mr. Brian Bernados (DPH) explained the extensive role that DPH has in terms of assuring the quality of recycled water. His PowerPoint presentation (now available at the State Board's website) was demonstrative of showing the depth of DHS' role in this process. In his comments at the Workshop, Mr. Bernados said something specifically worthy of quote: "The

Department sets the standards for recycled water to protect public health." (Emphasis added).
The City concurs with Mr. Bernados as to the DPH's responsibility and mandate.

(iv) The State Board merely has to "consult" with the Regional Board

Once the General Permit is established, an applicant (which can include someone already subject to a waste discharge requirement or master water reclamation requirement) may obtain coverage by submitting a Notice of Intent. Once this is done and all applicable forms are completed and fees paid, the State Board has to determine if they applicant is eligible. There is also a 30-day comment period. Of interest, the only requirement that the State Board has in relation to the Regional Boards is to "consult" with the applicable Regional Board on the eligibility of the requested project.

City Comments:

Because only consultation is required, the City believes that it would be prudent to require the appropriate Regional Board to express their opinions within the public comment period as opposed to a later time, so as to avoid delay. This should not be an undue burden in any way. In fact, it may be easier for the Regional Board to respond as they have much of the information and knowledge about the area in question, whereas the public must start from scratch in many cases.

(v) Opt In/Opt Out

Once approved, the applicant is no longer required to remain subject to an individual WDR or water reclamation requirement.

City Comment:

There is no stated mechanism as to how this would be done. The City suggests that if the State Board approves eligibility, that this automatically is an "opt out" of any other imposed and existing WDRs or Water Reclamation Master Permit requirements. The project proponent should be required merely to send to the Regional Board in question, or to the Master Permit holder, a notice that the State Board has deemed the project eligible, and reference should be made to the existing WDR or Master Permit which is no longer applicable. The City believes that if necessary a form could be generated by the State Board for such use.

3. State Board Questions

In the notice for the Workshop, State Board staff asks a series of questions. The City comments on them as noted below.

(a) Eligibility Criteria

Staff Question: What uses of recycled water should be considered "landscape irrigation" uses?

City Comment:

In keeping with the mandate of this legislation, and because the term "landscape irrigation" is not defined in the legislation, the City believes that the issue of eligibility must be read as broadly as possible. Indeed, a search of the laws of this state failed to show that there is a comprehensive definition.

However, the legislation's preamble references its declared purpose is to not use potable water for nonpotable uses, "including but not limited to, irrigation uses for cemeteries, golf courses, parks and highway landscaped areas..." Thus, the listed uses should not be viewed as a limitation of use, but obviously should be included in whatever definition that the State Board decides on.

In order to provide some guidance, the City suggests a definition that includes the following general descriptions:

The use of recycled water for landscape irrigation is meant to include the following:

- (1) Golf courses and the property immediately adjacent thereto used in support of operations and maintenance of the golf course itself;
- (2) Cemeteries and the property immediately adjacent thereto used in support of operations and maintenance of the cemetery itself;
- (3) Parks, greenbelts, and open recreational spaces where groundcover exists that requires irrigation;
- (4) Freeway and roadway medians or other such adjacent area within the right of way of the freeway or roadway where groundcover exists that requires irrigation;
- (5) Any portion of a commercial or industrial parcel where groundcover exists that requires irrigation, less any building footprint, driveways, non-irrigated portions of parking lots, hardscapes - such as decks and patios, and other non-porous areas if same exist;
- (6) Any portion of a government owned parcel where groundcover exists that requires irrigation, less any building footprint, driveways, non-irrigated portions of parking lots, hardscapes - such as decks and patios, and other non-porous areas if same exist;
- (7) Any area, not including hardscape, on which is planted or on which grows trees, shrubs, or grasses which are not used as or for the production of edible food, whether or not the land is in its natural or graded and contoured form; and
- (8) Any other portion of real property that due to its nature the State Board believes should be considered as an area where landscape irrigation with recycled water can be employed.

Staff Question: Who should be eligible for coverage under the General Permit? (e.g., producer, distributors, users, etc.)?

City Comment:

The City views the benefit of this legislation is that, if properly interpreted, it can make the use of recycled water more widespread and the approval process simple. In that regard, the City

believes that the General Permit should be universally available. That is, there is no need to restrict it to any given group within in the recycled water production, distribution, and use chain.

In analyzing this issue, the City started with the concept of perhaps limiting the eligibility to users only. Clearly, it is the users that are the engine that will drive the increase use of recycled water. They have to want to use it and be able to use it or it does not matter how much may be available. It is axiomatic that the easier, more efficient, and less costly the process is, the greater the use of recycled water will be.

However, upon reflection, there appears to be no reason why the distributors and producers of the recycled water should not benefit from the General Permit. (Certainly in the case of the City, in many instances it would be the producer, distributor, and user.) That is, if the end use is permitted use under the General Permit and that permit contains BMPs or other requirements that attach to that use, it would not make sense to require anyone upstream of the user to have or seek to enforce more restrictive requirements. If that would be allowed, the purpose of AB 1481 would be thwarted. Thus, any such requirements that may exist or which are sought to be enforced, cannot override nor interfere with the grant of the permit for use issued by the State Board. This would extend the benefit of AB 1481 to the upstream entities by removing this use from the strictures they may now be forced to deal with through the Regional Board.

This could be handled by the General Permit containing language stating that:

No producer or distributor of recycled water that is used for landscape irrigation as deemed eligible for use by the State Board under the General Permit shall impose any requirement on the end user beyond those set forth in the General Permit.

Staff Question: What are appropriate eligibility "criteria" and why?

City Comment:

In order to maximize usage of recycled water for landscape irrigation, the eligibility criteria should be simple and consistent with the legislation. The City believes that the following criteria should be reviewed by the State Board and relevant information submitted to the State Board at the time the Notice of Intent is authored:

Criteria	Why This Information is Important
Category of the property by description and the specific category within the General Permit it falls under	It is important to know if the property fits the threshold eligibility by category.
Property Location	It is important to know where the property is if there are any exclusionary criteria that is developed, such as sensitive habitats.
Overall Property Size	This issue impacts the amount of water that may be needed and may therefore be critical to determine impacts on other property or environments.

Description of Areas Where Recycled Water Will Be Used	Same as above
Description of Areas Abutting Areas Where Recycled Water Will Be Used	Same as above
Nature of Property Ownership by Applicant	It is useful to know the nature of the applicant's interest. This assures the State Board that there is full disclosure on the issue should future questions arise concerning the use of recycled water at this location.
Approximate Current Potable Water Usage on Area Where Recycled Water Will Be Applied	Important fact to determine net benefits.
Approximate Anticipated Recycle Water Usage	While it should be the same as above, it may not be for numerous reasons
Recycled Water Source	As our position is that this is for the end user, there needs to be information assuring the State Board that the supplier has the necessary permits, etc. to supply water that meets the requirements.
Supply any Existing WRDs/Mater Reclamation Permits	There will likely be significant information available already through those vehicles and access to that information would be helpful.

Staff Question: Should certain areas be excluded from eligibility (e.g., wetlands, vulnerable surface waters, or unique public resources such as Lake Tahoe Basin or the California Coastal Zone)?

City Comment:

This is a difficult issue in light of need to increase the usage of recycled water. Clearly, the more categorical exclusions that are created, the less usage will occur even if there is no demonstrable evidence that an impact to that area would in fact occur. However, staff's question presupposes that the use of recycled water in certain areas will negatively affect certain water bodies. Unless and until staff can produce or provide valid scientific information to support such a generalization, the City cannot make any specific recommendation as to what areas, if any, should be considered to be eligible for a de facto or default restriction.

However, given the possibility that there may be some level of risk to some water bodies, the City proposes that the following process be considered during the course of the development of the General Permit. Each Regional Board should be asked to submit to the State Board its position that certain areas within its jurisdiction should be excluded from the use of recycled water for landscape irrigation. The Regional Boards should supply, at the very least, the following information in that regard:

(1) A specific designation of the area(s) in question proposed to be excluded from the actual usage of recycled water for landscape irrigation;

(2) All reasons and rationale why the area(s) in question are proposed to be excluded; and,

(3) All scientific evidence that supports the conclusion that the area(s) in question should be excluded.

The City would propose that a reasonable deadline be set for the submission of this information and a determination by the State Board of whether it concurs. These decisions would obviously be a matter of public record and discussion. The basis of the decision by the State Board should be made based on the preponderance of the evidence with no presumptions existing for either exclusion or inclusion. Obviously, if a Regional Board does not provide a request for such exclusion, none need be considered by the State Board on its own. The City does, however, believe that no Regional Board should be precluded from seeking to have an area excluded at a later time after the General Permit goes into effect when it can provide demonstrable evidence of a negative impact. At such time, it should bring forth the aforementioned information and the same type of vetting process should be performed.

Staff Question: Recycled Water Benefits

The Department of Water Resources' California Water Plan Update 2005 (Water Plan) states that the primary benefit of recycled water is to augment water supply. The Water Plan also identifies the following potential benefits of recycled water use:

- Provide more reliable local sources of water, nutrients, and organic matter for agricultural soil conditioning and reduction in fertilizer use.
- Reduce the discharge of pollutants to water bodies, beyond levels prescribed by regulations, and allow more natural treatment by land application.
- Provide a more secure water supply during drought periods.
- Provide economic benefits resulting from a more reliable water supply.
- Improve groundwater and surface water quality and contribute to wetland and marsh enhancement.
- Provide energy savings-the use of recycled water as a local source offsets the need for energy-intensive imported water.

What other potential benefits of recycled water used for landscape irrigation should the State Water Board take into consideration?

City Comment:

The City believes that staff's outline, in general form, covers many of the key benefits that the General Permit could bring about or influence. The City would also add that the General Permit:

- Reduces the usage of potable water for uses which do not need or benefit from that level of water quality.
- Creates jobs due to need for greater infrastructure and the maintenance thereof.
- Will allow for a greater range and amount of plant growth which will have a positive impact on climate.
- Avoid diversion of other waters needed for sensitive areas.
- May lower the need for additional nitrogen additions for plant health.

Further, this issue of benefit cannot only be viewed in a vacuum. The use of recycled water under the General Permit will increase the overall usage of recycled water and will therefore actually allow these benefits to be realized.

Staff Question: Recycled Water Concerns

Recycled water has several characteristics that can create water quality and public health problems if improperly treated, managed, and regulated, including the following:

- If not fully treated, domestic wastewater may contain pathogens harmful to humans. The potential transmission of disease by pathogenic organisms may be a concern.
- Recycled water contains a mixture of anthropogenic and naturally occurring salts. These salts are usually concentrated in the soil column as a result of irrigation. The extent to which the salts accumulate in the soil and threaten to degrade beneficial uses of water depends on many factors, including the salinity of the recycled water, irrigation management, and the adequacy of drainage.
- As a result of domestic, commercial, and industrial uses, waste constituents enter the collection system of wastewater treatment facilities. Although wastewater treatment facilities substantially reduce the concentration and mass of waste constituents, most conventional wastewater treatment plants are not designed to completely remove all wastes, including "emerging contaminants." The fate of untreated waste constituents is variable and in some cases unknown. How should the General Permit address emerging contaminants?
- Discharges of recycled water, without regard to intent or negligence, not authorized by waste discharge requirements threaten to create a nuisance and in some cases violate provisions of the federal law.
- What considerations should be included in the General Permit regarding application of State Water Board Resolution No. 68-16 (the "anti-degradation" policy)?

What other potential concerns regarding recycled water use for landscape irrigation should the State Water Board consider?

City Comment:

First issue: Staff wrongly asserts a concern that recycled water "if not fully treated... may contain pathogens harmful to humans." This assertion is totally without merit. Under existing law, the

DPH sets the standards for recycled water. (See generally the Water Recycling Criteria in Title 22 of the CCRs.) Also note the following:

Water Code § 13520. Recycling criteria:

As used in this article "recycling criteria" are the levels of constituents of recycled water, and means for assurance of reliability under the design concept which will *result in recycled water safe from the standpoint of public health, for the uses to be made.* (Emphasis added).

Water Code § 13521. DHS establishes recycling criteria:

The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water *where the use involves the protection of public health.* (Emphasis added).

The City is certain that the State Board knows that Water Code § 13529 et. seq. outlines the significant penalties for misuse of recycled water or use of water that does not meet the criteria as set forth by the DPH. Thus, staff's concern is misplaced. The recycled water that will be permitted under the General Permit will meet all appropriate standards set by DPH, and to presume that there will be use of water that is not "fully treated" is inappropriate and appears to call into question DPH's ability to set such standards.

Second issue: Staff raises issues concerning the amount of salts that may be in the recycled water and its impact. In the most current draft of the State Board's Recycle Water Policy, staff has suggested the following:

The allowable difference between the public water supply and the produced recycled water is proposed to be 550 milligrams per liter (mg/l) TDS. This was selected as being a difference that most recycled water producers can currently meet. Producers that cannot meet the limitation will have to implement control measures.

The City believes that as part of the General Permit, it would be acceptable to exclude from use recycled water that fails to meet that TDS level at the use location. It would be up to the producer and user to establish the necessary communication to bring some assurance of compliance to this situation. As there will no doubt be BMPs that will be issued as part of the General Permit process, this could be included therein.

Third issue: Staff raises concerns over the issue of emerging chemicals. As far as the State Board is concerned, this should be a non-issue. As noted above, the DPH has the responsibility to set the standards for human health as to issues of recycled water. As the State Board also knows, under the California Safe Drinking Water Act, it is DPH that sets standards for potable water as well. When DPH believes an emerging chemical is of concern, they will act upon it.

Water Code Section 13576 states: (e) The use of recycled water has proven to be safe from a public health standpoint, and the State Department of Health Services is updating regulations for the use of recycled water. (Emphasis added).

Further, as stated above, AB 1841 must be read as stating that as long as the recycled water is within the limits established by the DPH, the water is acceptable for usage, and the State Board can only determine if the usage at a given location is appropriate. There is absolutely no need for any further evaluation as to quality of the recycled water by the State Board. There is absolutely no need for the State Board to be involved with the issue of emerging contaminants, an issue best left to the DPH both on the basis of their scientific ability and their statutory authority. There is no need for the State Board to determine what it has discussed in its Recycled Water Policy (Draft) as "MCL equivalents". Indeed, the City believes that any such action would be clearly in violation of AB 1481.

Fourth issue: Staff raises the issue that discharges of recycled water which are not authorized may create a nuisance and in some cases violate provisions of the federal law. The City agrees that unauthorized usages could lead to the creation of nuisances and violations of law. But there is an existing body of law in the Water Code which gives the Regional Boards, other state enforcement agencies, and local agencies significant power to deal with those that are guilty of unauthorized discharges. There is no need to be concerned about such matters in the General Permit except to state therein that:

Nothing in this General Permit is meant to reduce, change or affect, the ability of the State Board, Regional Board(s), or any other agency with jurisdiction to prevent, deter, or prosecute any unauthorized discharge or release of recycled water.

Fifth issue: Staff raises concerns regarding what considerations should be included in the General Permit regarding application of State Water Board Resolution No. 68-16. The City strongly supports the State Board's anti-degradation policy as set forth in Resolution No. 68-16, but here it must be read in the context of the legislature's requirements set forth in AB 1481 and on the basis of common sense as applied to this issue.

The City must initially point out that Resolution No. 68-16 is not an absolute bar on degrading the existing quality of water in a given location. To the contrary, the wisdom of Resolution No. 68-16 is that it accepts the fact that such degradation may take place, and it is the role of the State Board to assure that such degradation is minimized and serves the maximum benefit of the people of this state.

Resolution No. 68-16 also notes that not all water is the same quality and that some is of lesser quality than what may be discharged into it. ("WHEREAS the quality of some waters of the State is higher than that established by the adopted policies...."). (Emphasis added).

The first "resolved" section in Resolution No. 68-16 states:

Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

Thus, the question is whether or not the change in any given circumstance is for the maximum benefit of the people of the state, and if it will affect beneficial uses of such water. The City believes that the General Permit is meant to be a method for making use of recycled water, and if it does change the existing "high quality" of water, it is consistent with the maximum benefit proscribed in Resolution No. 68-16. The City reaches that conclusion based on the following:

- Water Code Section 13350(a) states: The Legislature hereby finds and declares that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, *is a waste or an unreasonable use of the water* within the meaning of Section 2 of Article X of the California Constitution if recycled water is available which meets all of the following conditions, as determined by the state board, after notice to any person or entity who may be ordered to use recycled water or to cease using potable water and a hearing held pursuant to Article 2 (commencing with Section 648) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations. *Emphasis added*).
- AB 1481 states: (e) The Legislature has declared that the use of potable domestic water for nonpotable uses, including, but not limited to, irrigation uses for cemeteries, golf courses, parks, and highway landscaped areas, is a waste and unreasonable use if recycled water is available to meet the conditions needed for the use. *(Emphasis added)*.

Therefore the use of recycled water, on the basis it substitutes for potable water, eliminates the issue of waste and unreasonable use. A priori, its use is consistent with using water resources to the maximum benefit proscribed in Resolution No. 68-16.

- State Water Resources Control Board Resolution No. 77-1 states: "3. The California Legislature has declared that the people of the State have a primary interest in the development of facilities to reclaim water containing waste to supplement existing surface and underground water supplies; 4. The California Legislature has declared that the State shall undertake all possible steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the State. *(Emphasis added)*.

The State Board itself undertook the responsibility to encourage usage of recycled water. This policy must continue, as required under AB 1481, to benefit the people of the State of California. To not use this important resource not only goes against the State Board's own policy, but would encourage waste in direct contradiction to Resolution No. 68-16.

- The current State Water Board Recycle Water Policy (Draft) states: 26. Recycled water irrigation projects and groundwater recharge reuse projects provide benefits to the people of the state. These benefits include extending the state's limited water supply to provide water to its growing population, reducing diversions of surface water, and reducing use of groundwater supply. These benefits outweigh the costs associated with lowering of water quality, as mitigated through best practicable treatment or control, that would be caused by a recycled water irrigation project, provided that the lowering does not cause a violation of a water quality objective. Therefore, any lowering of water quality will

be consistent with maximum benefit to the people of the State. (Emphasis added).

The State Board is correct, that given the quality of recycled water, as established by the DPH, even if there is a lowering of water quality, the need to employ recycled water for all the benefits set forth herein (and others that may not be noted) is consistent with the maximum benefit to the people of the state.

Staff Question: Agency Coordination

- A 1996 Memorandum of Agreement (MOA) between the State Water Board [on behalf of itself and the Regional Water Quality Control Boards (Regional Water Boards) and California Department of Public Health (CDPH)] regarding the use of recycled water specifies primary areas of responsibility and authority between these agencies. Is the agency coordination strategy identified in the MOA appropriate to ensure adequate coordination of activities among the respective agencies relative to the development of the General Permit?
- How should the State Water Board coordinate the development of the General Permit with other state and federal agencies?
- How should the State Water Board facilitate consultation and consideration of "comments from the Regional Water Boards, groundwater management agencies and water replenishment districts with statutory authority to manage groundwater pursuant to their principal act, and any interested party," as required by the new law?
- Which recommendations in "Water Recycling 2030" by the Recycled Water Task Force (June 2003) should the General Permit implement and how?

City Comment:

First Issue: With reference to the 1996 MOA between the State Board (on behalf of itself and the Regional Boards) and DPH, staff asks if it is appropriate to ensure adequate coordination of activities among the respective agencies relative to the development of the General Permit. The City believes that some portions of the MOA need modification to promote the requirements and spirit of AB 1481. Further the City notes that the MOA raises some issues regarding the Water Code that may be inconsistent with AB 1481. This inconsistency may require the State Board to seek cleanup legislation from the legislature or a wholesale revision of the MOA.

The MOA states:

II. (B.) Water Reclamation Requirements and Reports states:

All persons who reclaim or propose to reclaim water, or who use or propose to use reclaimed water, must file a report with the appropriate RWQCB (Water Code Section 13522.5)¹. If a RWQCB determines that it is necessary to protect

¹ Water Code § 13522.5. (a) Except as provided in subdivision (e), any person recycling or proposing to recycle water, or using or proposing to use recycled water, within any region for any purpose for which recycling criteria have been established, shall file with the appropriate regional board a report containing information required by the regional board. (b) Except as provided in subdivision (e) every person

public health, safety, or welfare, it may prescribe water reclamation requirements where reclaimed water is used or proposed to be used (Water Code Section 13523)². Where regulatory criteria have been adopted, no person may either reclaim water or use reclaimed water until the appropriate RWQCB has either issued reclamation requirements or waived the necessity for such requirements (Water Code Section 13524)³. In the process of issuing reclamation requirements, the RWQCBs must consult with and consider recommendations of the Department (Water Code Section 13523). Any reclamation requirements which are issued by the RWQCBs, whether applicable to the reclaimer or to the user of reclaimed water, must be in conformance with any regulatory reclamation criteria adopted by the Department. Water reclamation requirements for a proposed use of reclaimed water that is not specifically addressed in the Title 22 water reclamation criteria adopted by the Department are considered on a case-by-case basis.

The MOA sets forth certain requirements that do seem to conflict with AB 1481 as there is no need for the procedure of filing reports with the Regional Boards, nor does the party seeking eligibility under the General Permit have any need unless, it would appear, they desire to do it on their own⁴. But more importantly, the MOA notes that if the Regional Board wants the DPH to review something, because the Regional Board thinks there is a threat, the DPH will perform said work.⁵ It is inconceivable that this is a need where usage under the General Permit is deemed to be eligible by the State Board.

The MOA, III (B.) states:

recycling water or using recycled water shall file with the appropriate regional board a report of any material change or proposed change in the character of the recycled water or its use. (c) Each report under this section shall be sworn to, or submitted under penalty of perjury. (d) This section shall not be construed so as to require any report in the case of any producing, manufacturing, or processing operation involving the recycling of water solely for use in the producing, manufacturing, or processing operation. (e) Except upon the written request of the regional board, a report is not required pursuant to this section from any user of recycled water which is being supplied by a supplier or distributor for whom a master recycling permit has been issued pursuant to Section 13523.1.

² Water Code § 13523. (a) Each regional board, after consulting with and receiving the recommendations of the State Department of Health Services and any party who has requested in writing to be consulted, and after any necessary hearing, shall, if in the judgment of the board, it is necessary to protect the public health, safety, or welfare, prescribe water reclamation requirements for water which is used or proposed to be used as reclaimed water. (b) The requirements may be placed upon the person reclaiming water, the user, or both. The requirements shall be established in conformance with the uniform statewide reclamation criteria established pursuant to Section 13521. The regional board may require the submission of a preconstruction report for the purpose of determining compliance with the uniform statewide reclamation criteria. The requirements for a use of reclaimed water not addressed by the uniform statewide reclamation criteria shall be considered on a case-by-case basis.

³ Water Code § 13524. No person shall recycle water or use recycled water for any purpose for which recycling criteria have been established until water recycling requirements have been established pursuant to this article or a regional board determines that no requirements are necessary.

⁴ AB 1481 states that a party eligible is not required to become or remain subject to individual WDRs or water reclamation requirements, but they can if they so desire.

⁵ III. (A.) All requests for water reclamation requirements submitted to a RWQCB pursuant to Section 13522.5 shall be considered to be a request for review by the Department pursuant to Section 13554.2, since Departmental review and recommendations are required by Section 13523.

Wherever feasible, the Department shall use the issuance of water reclamation requirements by a RWQCB as the preferred method of granting Departmental approval to a proposed project to avoid the issuance of separate project approvals by the Department.

The MOA, III (D.) states:

The Department will identify in its recommendations to a RWQCB with respect to proposed water reclamation requirements any conditions upon which its approval of a proposed project is based. The RWQCB staff will incorporate any "conditions of approval" submitted as part of the Department's recommendations into the water reclamation requirements proposed for adoption by the RWQCB.

The MOA, IV (B.) states:

The Department agrees to review and respond to water reclamation proposals and proposed water reclamation requirements within 30 days of receiving such referrals from the RWQCB. Should the Department determine that the project report is incomplete [per Water Code Section 13554.2(e)], it will immediately inform the RWQCB and indicate the additional information needed in order to complete the review of the proposed project.

The General Permit as required under AB 1481 appears to moot these requirements as to landscape irrigation.

Second issue: Staff inquires as to how the State Board should coordinate the development of the General Permit with other state and federal agencies. The City offers no comments on this matter as it believes the experience of the State Board in these matters is significant. That is, this is not the first time such coordination is necessary, and the City assumes that the State Board is in the best position to make this determination.

Fourth Issue: Staff inquires as to how the State Board should facilitate consultation and consideration of other agencies and replenishment districts as required by the AB 1481. Again, the City believes that the State Board, which has had to consult and consider comments from other agencies before, is in the best position to make this determination.

The City, however, would like to suggest that when this is done, that timing be considered. We would propose that the State Board immediately solicit comments from specific agencies on the questions posed for the Workshop or others as the State Board may determine. Following this, when the State Board is prepared to issue a draft of the General Permit, it obviously should be circulated at the same time to such agencies, and they should be asked to comment on the same schedule as members of the public.

Fifth Issue: Staff inquires as to which recommendations in "Water Recycling 2030" by the Recycled Water Task Force (June 2003) should the General Permit implement and how they should be implemented. The City observes that the Recycled Water Task Force (Task Force) set forth a myriad of recommendations, many of which are a matter of public policy that do not relate to the issuance of a General Permit. However, the City comments on those that it believes are pertinent to the issues raised regarding the General Permit.

Task Force Recommendation: Incidental Runoff (4.2) - The State should investigate, within the current legal framework, alternative approaches to achieve more consistent and less burdensome regulatory mechanisms affecting incidental runoff of recycled water from use sites. (Executive Summary, page ivx).

This is perhaps the most important of the recommendations in the Task Force report. The Task Force describes this issue appropriately:

Incidental runoff or overspray of minor amounts of irrigated water at the edges of irrigated areas is difficult to prevent. It is also difficult to prevent runoff of rainwater from areas irrigated with recycled water or from aesthetic ponds on golf courses filled with or previously filled with recycled water, especially during major storm events. Some RWQCBs strictly enforce the runoff prohibitions, resulting in the need for expensive design provisions or preventing the feasibility of using recycled water. The runoff prohibitions have been dubbed the "one molecule rule," implying that the existence of one molecule of wastewater origin in runoff constitutes a discharge of wastewater. (Page 42)

As part of their recommendation the Task Force suggests that the State Board convene a committee to discuss certain issues. While such a committee would prove useful, the City believes that in the final analysis this could be done far more expeditiously through the submittal of comments on this specific issue and a resolution offered by the State Board.

The City does, however, agree with the Task Force's suggestion that there should be an "evaluation of best available scientific data that demonstrate the effects of discharges of incidental runoff." (Page 43). The City believes that such an examination in relation to landscape irrigation would prove that there is at most a *di minimus* health risk from such runoff. This stands to reason that as the water is safe, as so stated by the DPH, the runoff should be as well. And if it is not, then the runoff would be the same as if potable water was used, as the injurious material would have been picked up by flow after release.

Likewise the City agrees with the Task Force recommendation that a review as to how other states address comparable situations in regulation and enforcement (Page 43) would be useful. Further, while the Task Force is discussing ponds, the City believes that the concept of having the State Board adopt a specific waiver of waste discharge requirements for unintentional recycled water overflows pursuant to Water Code §13269 makes sense in light of the dictates of AB 1481.

Of primary interest is the Task Force's recommendation, again dealing with ponds, that "allowance of discharges under an NPDES permit with the following conditions: (a) compliance point to be at the point of leaving the wastewater treatment plant (WWTP) rather than exit of the pond..." This issue should be extended to deal with all incidental run off that is subject to an MS4 permit. In review of both past and pending MS4 permits for the City, such urban runoff and the various BMPs, both structural and otherwise, are established and would encompass the need to control such incidental runoff.

Task Force Recommendation: Source Control (4.6) - Local agencies should maintain strong source control programs and increase public awareness of their importance in reducing pollution and ensuring a safe recycled water supply.

The City believes that source control is best left to the Regional Boards who have a better understanding of sources of supply as long as they are mindful that the actual issue of the quality of the source's effluent is within the sole regulatory purview of the DPH, not them. As noted in AB 1481 and by Assemblyman De La Torre at the Workshop, the "patch-work quilt" of regulation has not and does not work.

Staff Question: Existing Recycled Water Use Authorizations – Regional Water Boards currently use a combination of water reclamation requirements, waste discharge requirements, general waste discharge requirements, master reclamation permits, conditional waivers, and other regulatory tools to authorize landscape irrigation uses of recycled water.

- How should the General Permit address persons currently subject to the various Regional Water Board authorizations for "landscape irrigation uses" of recycled water?
- What is an appropriate way for the General Permit to interface with existing and future master reclamation permits?

City Comment:

These issues are answered by AB 1481 directly. Staff appears to be raising an issue that the General Permit must relate or "interface" with the already "patch work quilt" of permits. They need not relate, interface, recognize, or have anything to do with the current slew of permits.

First, AB 1481 demands simplicity. What staff describes which presently exists, merely to permit landscape irrigation, is what AB 1481 was to made to cure.

Second, AB 1481 requires the State Board to issue a General Permit that permits the use of recycled water for landscape irrigation independent of whatever a regional board may do, and in the view of the City, this includes issues relating to Master Reclamation Permits.

Third, AB 1481 allows a eligible entity under the General Permit to remain covered by the various permits it now must deal with, or it may opt out of them and proceed under the General Permit. Therefore, "interface" is irrelevant.

Staff Question: Fees – The new law requires the State Water Board to establish a reasonable schedule of fees to reimburse the costs incurred to implement, develop, and administer the General Permit and other requirements in the new law.

- What is a "reasonable schedule of fees" to satisfy the new law?

City Comment:

The City has no particular position on the actual pricing structure except to say that the pricing does need to take into account what AB 1481 has mandated. Simplicity in structure and fairness in pricing is paramount so that the use of recycled water is encouraged, not discouraged. As noted in the State Board's Web Site⁶ for Landscape Irrigation Uses of Recycled Water:

⁶ http://www.swrcb.ca.gov/water_issues/programs/water_recycling_policy/landscape_irrigation_general_permit.shtml

The new law is also intended to reduce costs to producers and users of recycled water by streamlining the permitting process for using recycled water for landscape irrigation.

The City completely agrees.

The City thanks the State Board for this opportunity and looks forward to working with the State Board to bring about a simplified process for the issuance of the General Permit.

Very truly yours,



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